



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/329,487	06/10/1999	MITCHEL KRISS	29284/35302	8147

7590 07/28/2003

SCHIFF, HARDIN & WAITE
Patent Department- 71st floor
233 South Wacker Drive
Chicago, IL 60606-6473

EXAMINER

NORMAN, MARC E

ART UNIT PAPER NUMBER

3744

DATE MAILED: 07/28/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/329,487

Applicant(s)

KRISS ET AL.

Examiner

Marc E. Norman

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-11,14-16,22-37 and 39-49 is/are rejected.
- 7) ☒ Claim(s) 7,8,12,13,17-21 and 38 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION***Response to Arguments***

Applicant's arguments filed 28 May 2003 have been fully considered but they are not persuasive. Applicant supplied several arguments as to why he believes the rejection set forth in the previous Office Action (paper #12) is improper. Each of Applicant's arguments is addressed in turn below.

First, Applicant asserts that the pertinent section of Ando is limited to demand forecasting, whereas Applicant's claim 1 is directed to estimating past sales. (page 16, lines 19-26)

The Examiner disagrees with this assertion. As already discussed in the previous Office Action, Ando is not strictly concerned with future sales. In particular, Ando states that "the sales amount in all shops is presumed from the sales amount in the sample shop based on the sales amount ratio..." (column 1, lines 33-35) Accordingly, Ando estimates past sales in all shops based on the sales pattern in the single sample shop. In other words, Ando collects data from a sample shop, which is a single shop extracted from a plurality of shops (column 1, lines 31-33), and uses that information, along with the ratio of overall sales in the sample shop to the overall sales of all the shops, to estimate the past sales in all shops.

Applicant is also referred to the newly cited Yamamoto et al. reference. This reference depends from the same Japanese parent case (2-112274) as the pertinent Japanese reference (8-

Art Unit: 3744

16950) discussed in Ando. In particular, column 8, lines 1-36 discusses the scale-up estimating routine, which is the same as that referred to in Ando. As can be seen, data is taken from specific outlets and used in this routine to estimate total past sales for all outlets.

Demand forecasting does not focus on the customers of a particular product supplier as required by independent 1, but rather focuses on consumers as a whole or on one or more segments of consumers. (page 17, lines 1-4)

The sample shop which is a single shop extracted from a plurality of shops (column 1, lines 31-33) is the particular product supplier of interest.

The sample shop discussed in Ando is merely a representation (a sort of average) of the plural shops.... It is merely a mathematical model of the plural shops.... Thus, the data of the sample shop is a subset of the plural shops and is not independent of the data from the plural shops.... There is no supplier of interest disclosed in the Ando patent. (page 17, line 6 – page 19, line 13)

The Examiner submits that these assertions are based upon a misreading of Ando, and upon an interpretation of Ando that is not supported by the reference. Ando clearly states that “the sales amount of each product is collected from a sample shop extracted from plural shops.” (column 1, line 31-33) Accordingly, the sample shop is a particular single shop, extracted from among the plural shops, from which product sales amounts are collected. Nowhere does Ando

Art Unit: 3744

state or vaguely suggest that the sample shop is “merely a representation (a sort of average) of the plural shops.” Furthermore, such a interpretation makes no logical sense. If, as the Applicant suggests, the sample shop is a sort of abstract average of the plural shops, then how could sales amount information from the sample shop be collected? Furthermore, if the sample shop is based on an averaging of the plural shops, it must be based somehow on previously held knowledge of the sales patterns of all the shops. But that is exactly what it is being used to estimate. It makes no sense to create something to estimate the information on which it was originally created.

The sample shop is not “merely a representation (a sort of average) of the plural shops,” and is in fact an individual supplier of interest. Again, see column 8, lines 1-36 of Yamamoto et al. for further discussion of the scale-up estimate routine.

Regarding the Egol reference, the Applicant makes several assertions as discussed below:

- *“The Examiner incorrectly concludes... that purchases from the other suppliers by the customers of the suppliers of interest are being estimated.”*

The rejection as set forth in the previous Office Action did not rely on Egol to teach this feature. This feature is taught by the Ando patent, as already thoroughly discussed above. Egol was relied on simply to illustrate that gathering panelist data to determine the purchasing trends of customers regarding both a particular supplier and it's competitors (see lines 25 and 26) is old

Art Unit: 3744

and well known in the art. As stated in the previous Office Action: "It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the panelist data gathering step of Egol with the sales estimation method of Ando for the purpose of providing the base data for determining the relationship between the purchases made from the supplier of interest and the purchases made from the other suppliers, since Ando already makes use of such a relationship and since the panelist data of Egol is also directed to providing the base information for analyzing customer purchase patterns from competitors."

- *"There is no disclosure in the Egol material of estimating the purchases from other suppliers by the customers of a supplier of interest."*

Again, as thoroughly discussed above, Egol was not relied upon to teach this feature. This feature is taught by the Ando patent.

- *"[T]he Egol material does not suggest modifying the sample shop as disclosed in the Ando patent so that the sample data is independent of the plural shops."*

Again, Applicant has misinterpreted the concept of the sample shop. The data collected from the sample shop in Ando is independent of the plural shops. Egol is not relied upon to teach this feature.

Art Unit: 3744

- *[B]ecause the Ando patent merely relates to demand forecasting and the Egol material merely relates to determining new product appeal, the combination of the [references]... cannot teach estimating the purchases from other suppliers...*

Once again as discussed above, the Ando patent does not merely relate to demand forecasting, but to estimating past sales in all shops based on the sales pattern in the single sample shop.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 9-11, 14-16, 22-36, 39-44, 48, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ando in view of Egol.

In view of the response set forth above to Applicant's arguments, the rejections of these claims are set forth in the previous Office Action are hereby carried forward and maintained.

Claims 35 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ando in view of Egol, and further in view of Besser.

Applicant presents no new specific arguments regarding these claims. Accordingly, the rejections of these claims are set forth in the previous Office Action are hereby also carried forward and maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc E. Norman whose telephone number is 703-305-2711. The examiner can normally be reached on Mon.-Fri., 8:00-5:30, with first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel can be reached on 703-308-2597. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5648.

Application/Control Number: 09/329,487
Art Unit: 3744

Page 8

MN
July 23, 2003

A handwritten signature in black ink, appearing to read 'Marc Norman', with a stylized flourish at the end.

**MARC NORMAN
PATENT EXAMINER**